

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

WP(C).No. 35133 of 2005(G)

PETITIONER:

P.ABOOBACKER, FORMERLY P.D.TEACHER,
G.H.S., KOCHANNUR, CHAVAKKAD,
RESIDING AT PALLIKKARAYIL HOUSE, CHAMMANNOOR.P.O,
VIA.PUNNAYURKULAM.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVT.SECRETARIAT,
TRIVANDRUM.
2. THE DEPUTY DIRECTOR OF EDUCATION,
THRISSUR.

BY GOVERNMENT PLEADER, SRI.V.T.K.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT. P1: COPY OF ORDER NO.A4.25533/93 DATED 8.9.1997 ISSUED BY THE
2ND RESPONDENT.
- EXT.P2: COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER
BEFORE THE HONOURABLE MINISTER FOR EDUCATION DATED
16.10.2004.
- EXT.P3: COPY OF G.O.(RT)NO.5037/05/G.EDN. DATED 22.10.05 ISSUED BY
THE 1ST RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

A.K. BASHEER, J.

W.P.(C). NO. 35133 OF 2005

Dated this the 12th day of March, 2007

J U D G M E N T

Petitioner, who was working as Primary Departmental Teacher in a Government School had retired from service on superannuation on March 31, 1996. However, as per the order dated September 8, 1997, a copy of which is on record as Ext.P1, his services were terminated with effect from June 7, 1993. The above order was confirmed in appeal by the Government, as revealed from Ext.P3.

2. The prayer in the writ petition is to issue a writ of certiorari to quash Exts. P1 and P3 orders. There is also a further prayer to issue a writ of mandamus or such other appropriate writ, order or direction to the respondents to grant all consequential benefits including arrears of salary and pensionary benefits like pension gratuity etc. to him forthwith. Learned counsel while inviting my attention to two decisions of this Court in **Xavier v. Kerala State Electricity Board** [1979 K.L.T. 80 (F.B.)] and in **Jayarajan v. State of Kerala** [2001 (3) KLT 929 (D.B.)] submits that Exts. P1 and P3 orders are wholly illegal and unsustainable. Though disciplinary proceedings were initiated against the petitioner prior to his retirement, neither the Department nor the Government can terminate petitioner's service after his superannuation. However, learned Government Pleader

would try to justify the action of the authorities contending inter alia that the proceedings had been initiated long ago, much prior to the superannuation of the petitioner.

3. But, I am afraid the above contention cannot be sustained in view of the dictum laid down by this Court in the two decisions mentioned supra. Therefore Ext.P1 and Ext.P3 are quashed. However, it is made clear that it will be open to the Department to take recourse to the remedies available to it under Rule III Part III KSR, if so advised.

The Government Department will be free to take a fresh decision in the matter in tune with the directions contained in the judgment mentioned above. In the meanwhile the admissible amounts payable to the petitioner shall be disbursed to him as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

A.K. BASHEER, JUDGE

vps

WPC NO.35133/05

Page numbers

KURIAN JOSEPH, JUDGE

OP NO.

JUDGMENT

21st DECEMBER, 2006